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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
Plaintiff, ) No. CIV 98-1232 (TPJ)  
vs. ) VOLUME II  
(Afternoon Session)  
MICROSOFT CORPORATION, )  
Defendant. ) CONFIDENTIAL

DEPARTMENT OF JUSTICE  
AUG 31 1998  
ANTITRUST DIVISION  
SAN FRANCISCO OFFICE

CONTINUATION OF THE DEPOSITION OF BILL  
GATES, a witness herein, taken on behalf of the  
plaintiffs at 12:35 p.m., Friday, August 28, 1998, at  
One Microsoft Way, Redmond, Washington, before  
Katherine Gale, CSR, pursuant to Subpoena.

REPORTED BY:  
Katherine Gale  
CSR No. 9793  
Our File No. 1-49006



1                   You are aware, are you not, sir, that  
2 one of the issues in this case is the extent to which  
3 operating systems and browsers are or are not  
4 separate products?

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                  THE WITNESS: I'm not a lawyer, so I  
think it's very strange for me to opine on what's an  
issue in the case. As far as I know, the issues in  
the case are not -- are something that you decide,  
and I don't claim to have an expertise at all.

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19                   Mr. Gates, do you understand that the  
20 issue of whether or not browsers are a separate  
21 product or are not a separate product from the  
22 operating system is an issue in this case?

23           A        I don't consider myself someone who  
24 could say if that's an issue in this case or not.

25           Q        Have you participated in any way in

1 trying to get Microsoft personnel to use language  
2 that would suggest that browsers and operating  
3 systems are not separate products?

4 A I have no idea what you mean by that.

5 Q Well, have you seen e-mails that urge  
6 people within Microsoft not to talk about browsers as  
7 if they were separate from the operating system?

8 A I don't recall seeing any such e-mail.

9 Q Are you aware of any anybody within  
10 Microsoft who has asserted, either in an e-mail or  
11 otherwise, that people ought to not talk about  
12 browsers as if they were separate from the operating  
13 system?

14 A I don't remember any such e-mail.

15 Q Has Microsoft tried to get companies to  
16 agree to statements that Internet Explorer comprises  
17 part of the operating system of Windows 95 and  
18 Windows 98?

19 A I know it's a true statement, but I'm  
20 not aware of us doing anything to try to get anyone  
21 else to endorse the statement.

22 Q You're not aware of any effort by  
23 Microsoft to get non-Microsoft companies to endorse  
24 the statement that Internet Explorer comprises part  
25 of the operating system of Windows; is that what

1 you're saying?

2 A I'm not aware of such efforts.

3 Q Do you know whether Microsoft has made  
4 any efforts to include language like that in any of  
5 its license agreements?

6 A No, I don't.

7 Q Do you know why Microsoft might do  
8 that?

9 MR. HEINER: Objection.

10 THE WITNESS: I'm not sure.

11 Q BY MR. BOIES: Do you recognize that  
12 OEMs have a need to acquire the Windows operating  
13 system that Microsoft licenses?

14 A What do you mean by OEM? Is it a  
15 tautology because of the way you're defining it?

16 Q Well, if you take IBM and Compaq and  
17 Dell, Gateway and some other companies, those are  
18 commonly referred to as OEMs or PC manufacturers;  
19 correct, sir?

20 A No. The term "OEM" would be quite a  
21 bit broader than that. OEMs used means original  
22 equipment manufacturer.

23 Q I see.

24 And does OEM have a specialized meaning  
25 in your business to refer to people that supply

1 personal computers?

2 A No. It usually means our licensees.

3 Q And do your licensees, in part, supply  
4 personal computers, sir?

5 A Some of our licensees.

6 Q The licensees to whom you license  
7 Windows are suppliers of personal computers, are they  
8 not, sir?

9 A If you exclude Windows CE and depending  
10 on how you talk about workstations and servers.

11 Q So that if we can get on common ground,  
12 the licensees for Windows 95 and Windows 98 would be  
13 companies that you would recognize as personal  
14 computer manufacturers; is that correct?

15 A Yeah. Almost all the licensees of  
16 Windows 95 and Windows 98 are personal computer  
17 manufacturers. Some are not, but the overwhelming  
18 majority are.

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In a number of questions I've asked you  
24 about whether Microsoft wanted to gain browser share,  
25 and you have said, well, we want to have more

1 exposure for our innovations. Are you aware of any  
2 effort within Microsoft, for purposes of this  
3 litigation, to sort of change the way you and others  
4 use terms?

5 A. No.

6 Q. None at all, sir?

7 A. Changing the way I use terms? No.

8 Q. How about changing the way others in  
9 Microsoft use terms?

10 A. I'm not aware of that, no.

11 Q. Are you aware of any discussions within  
12 Microsoft about changing the way terms are used in  
13 order to advance your interests in the litigation?

14 A. No.

15 Q. In your answers you refer often to  
16 browser technologies or browsing technologies as  
17 opposed to answering a question simply about  
18 browsers. Is that related at all to avoid using a  
19 term that you think connotes a separate product?

20 A. It's all done with the goal of making  
21 sure you're not confused about what I'm referring to.

22 Q. Well, is it part of the goal to try to  
23 advance a particular point of view in this  
24 litigation, is that part of why you don't want to use  
25 in this deposition words like browser that are

1 throughout the documents of the Microsoft  
2 Corporation?

3 A. I'm glad to use the term browser and  
4 I've used the term many times in this deposition and  
5 in many other cases.

6 Q. And when you use the term browser, you  
7 know what it means, do you not, sir?

8 A. When I use terms in general, I do it in  
9 a context where it's clear what they mean. In the  
10 case of browser, as we've discussed, sometimes it  
11 might include what we're doing on Macintosh,  
12 sometimes it might include one version of Windows,  
13 sometimes it might include other people's products  
14 that include those capabilities. Isolated by itself  
15 are you saying does the word browser without any  
16 context mean something that is evident to me? No,  
17 but in a specific context, I freely use the word  
18 without any difficulty.

19 Q. And, for example, in writing to your  
20 top officers in January of 1996, you talk about  
21 winning Internet browser share and you believed you  
22 were being understood; correct, sir?

23 A. Are you referring to an e-mail to a  
24 single person, to Joachim Kempin?

25 Q. The one I have in front of me is

1 addressed to Mr. Kempin with copies to  
2 Mr. Silverberg, Mr. Chase, Mr. Ludwig, Mr. Ballmer,  
3 and a number of other people.

4 A. But I think in terms of understanding  
5 the context of the message, the fact that it is  
6 directed to Joachim Kempin and talks about OEMs helps  
7 establish what I probably meant when I talked about  
8 browser share here and browsers.

9 Q. Let me just be clear. When you sent a  
10 copy -- I don't want to go through all the names  
11 here, but two of the people you sent copies to were  
12 Mr. Ballmer and Mr. Maritz; is that fair?

13 A. Yes.

14 Q. And they were two of the very top  
15 officers of Microsoft; correct?

16 A. Yes.

17 Q. Now, let me go back to what I was  
18 pursuing before. Is there an effort at all on your  
19 part or insofar as you are aware on other people's  
20 parts, to change the way words are used so as to,  
21 from your standpoint, clarify what is meant for  
22 purposes of this litigation?

23 A. I've told you I'm not aware of an  
24 effort to change the use of terminology related to  
25 the purposes of this litigation.

1 Q. Let me ask you to look at a document  
2 that has been marked as <sup>Gov. Trial Exhibit 317</sup> ~~Government Exhibit~~ 393. The  
3 first e-mail here -- and there's an e-mail from you  
4 later on, but the first e-mail here is an e-mail to  
5 you and others dated February 15, 1998; is that  
6 correct?

7 A. To me?

8 Q. Yes.

9 A. Yes.

10 (The document referred to was marked  
11 by the court reporter as Government Exhibit 393 for  
12 identification and is attached hereto.)

13 Q. BY MR. BOIES: And the subject is  
14 "Re: Browser in the OS." Do you see that subject of  
15 the February 15, 1998 e-mail to you?

16 A. Yes.

17 Q. And is it fair to say that that e-mail  
18 is a response to an e-mail from you dated  
19 February 14, 1998 at 10:42 a.m.?

20 A. It appears to be.

21 Q. And the subject of your e-mail was  
22 "Browser in the OS;" is that correct?

23 A. Yes.

24 Q. Now, the next to last paragraph on the  
25 first page of the memo to you -- and this memo goes

1 to you and to a large number of other people; is that  
2 correct?

3 A. I'm sorry? I just wasn't listening  
4 carefully.

5 Q. Sure. The February 15th, 1998 memo  
6 that is addressed to you also goes to four other  
7 addressees and a large number of additional copies;  
8 correct?

9 A. 13, yes.

10 Q. And this includes, together with  
11 yourself, the top executives of the company; correct?

12 A. Not all the top executives, no.

13 Q. Well, it includes Mr. Ballmer?

14 A. It includes some of the top executives.

15 Q. And it includes Mr. Maritz; correct?

16 A. Yes.

17 Q. And it includes yourself; correct?

18 A. Yes, in the "To" line.

19 Q. And it says in the next to last  
20 paragraph "Saying 'put the browser in the OS' is  
21 already a statement that is prejudicial to us."

22 A. Where are you looking? I thought you  
23 said the next to last paragraph.

24 Q. Next to last paragraph on the first  
25 page.

1           A.       Oh, okay.

2           Q.       It says -- and this is a quotation from  
3   the memo to you and the others, "Saying 'put the  
4   browser in the OS' is already a statement that is  
5   prejudicial to us. The name 'browser' suggests a  
6   separate thing."

7                    Do you remember being told that in or  
8   about February of 1998?

9           A.       No.

10          Q.       Do you remember receiving this e-mail?

11          A.       I don't remember receiving it, but I  
12   have no reason to doubt that it was a piece of e-mail  
13   that was sent.

14          Q.       Does this in any way refresh your  
15   recollection that within Microsoft there were  
16   discussions as to what words should or should not be  
17   used?

18          A.       I don't know what you mean refresh my  
19   recollection.

20          Q.       That is, having seen this, does this  
21   make you remember something that you didn't remember  
22   before?

23          A.       No.

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